

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)	
capacity as ATTORNEY GENERAL OF)	
THE STATE OF OKLAHOMA and)	
OKLAHOMA SECRETARY OF THE)	
ENVIRONMENT, C. MILES TOLBERT,)	
in his capacity as the TRUSTEE FOR)	
NATURAL RESOURCES FOR THE)	
STATE OF OKLAHOMA)	
PLAINTIFF)	
vs.)	05- CV-0329-TCK-SAJ
)	
TYSON FOOD, INC.,)	
)	
DEFENDANTS)	
)	
TYSON FOODS, INC.,)	
)	
THIRD PARTY PLAINTIFFS,)	
)	
vs.)	
)	
CITY OF TAHLEQUAH, et.al.)	
)	
Third Party Defendants)	

ANSWER TO THIRD PARTY COMPLAINT BY
THE FIN AND FEATHER RESORT, INC.

COMES NOW, Jo Nan Allen, attorney for Third Party Defendant, the Fin and Feather Resort, Inc. and answers the Third Party Complaint as follows:

Regarding, I. BACKGROUND, Third Party Defendant, Fin and Feather Resort, Inc. (hereinafter "Fin and Feather") is without sufficient knowledge of the background and the same are denied.

1. Fin and Feather is without sufficient knowledge of the allegations in the first sentence of Paragraph 1 and the same is denied. Fin and Feather admits that the State of Oklahoma has filed a complaint alleging the action and damages described in Sentence 2, 3, 4, 5, and 6.

2. Fin and Feather is without sufficient knowledge of the allegation in the first sentence of Paragraph 2, and the same is denied. Fin and Feather denies that the second sentence, third sentence, and the fourth sentence. Fin and Feather also denies the fifth sentence which is the accordingly sentence.

3. Fin and Feather denies Paragraph 3.

4. Fin and Feather denies the first sentence of Paragraph 4 applies to Fin and Feather and questions the numerous allegation in the rural northeast of Oklahoma. Fin and Feather is without sufficient knowledge of the second sentence of Paragraph 4 and the same is denied. Fin and Feather admits the third sentence of Paragraph 4.

5. Fin and Feather is without sufficient information of paragraph 5 of the first and second sentence and the same is denied. Fin and Feather admits the third sentence of Paragraph 5.

6. Fin and Feather is without sufficient information of the first sentence, second sentence and third sentence of paragraph 6 and the same is denied.

7. Fin and Feather is without sufficient information of the first sentence, second sentence and third sentence of Paragraph 7 and the same is denied.

8. Fin and Feather is without sufficient information of the first sentence in Paragraph 8 and the same is denied. Fin and Feather admits the second sentence of Paragraph 8.

9. Fin and Feather is without sufficient information of the first, second, third or fourth sentences in Paragraph 9 and the same is denied.

II. Parties

10. Fin and Feather is without sufficient information of Paragraph 10 and neither admits or denies Paragraph 10.

11. Fin and Feather is without sufficient information of Paragraph 11 and neither admits or denies Paragraph 11.

12. Fin and Feather is without sufficient information of Paragraph 12 and neither admits or denies Paragraph 12.

13. Fin and Feather is without sufficient information of Paragraph 13 and neither admits or denies Paragraph 13.

14. Fin and Feather is without sufficient information of Paragraph 14 and neither admits or denies Paragraph 14.

15. Fin and Feather is without sufficient information of Paragraph 15 and neither admits or denies Paragraph 15.

16. Fin and Feather is without sufficient information of Paragraph 12 and neither admits or denies Paragraph 16.

17. Fin and Feather is without sufficient information of Paragraph 13 and neither admits or denies Paragraph 17.

18. Fin and Feather is without sufficient information of Paragraph 14 and neither admits or denies Paragraph 18.

III. Third Party Defendants

19. Fin and Feather is without sufficient information of Paragraph 19 and neither admits or denies Paragraph 19.

20. Fin and Feather is without sufficient information of Paragraph 20 and neither admits or denies Paragraph 20.

21. Fin and Feather is without sufficient information and neither admits or denies Paragraph 21 through 66.

22. Fin and Feather admits the first sentence in Paragraph 67; and admits the second sentence including the legal description of the property owned by Fin and Feather. Fin and Feather admits the third sentence and does operate a resort. Fin and Feather denies that the fertilizers applied to the property contain chicken litter which is the subject of this law suit.

23. Fin and Feather specifically denies Paragraph 170.

IV. Jurisdiction and Venue

24. Fin and Feather admits the first sentence of Paragraph 171. Fin and Feather denies the second sentence and states that a septic system is maintained under Oklahoma DEQ rules and regulations. Fin and Feather denies the third sentence as they have no acts or omissions that would require a law suit to be brought against Fin and Feather. Fin and Feather denies the fourth sentence as they have not contributed to the Illinois River problems and are not a responsible party. Fin and Feather admits that the Court has jurisdictional over the issues of this case, but denies any liability as a defendant.

25. Fin and Feather admits jurisdiction in Paragraph 172, but denies any activity on property in Oklahoma that would cause any liability.

26. Fin and Feather admits that the Illinois River Watershed is situated in the Northern District, but denies the third party claims alleged in paragraph 173.

27. Fin and Feather is without sufficient information of paragraphs 174 through 195 to admit or deny.

28. Fin and Feather denies Paragraph 196.

29. Fin and Feather admits Paragraph 197 and asserts that Fin and Feather is not responsible for or contributed to any pollution in the Illinois River.

30. Fin and Feather is without sufficient information of paragraphs 198 and 199 and deny the Paragraphs.

31. Fin and Feather denies Paragraph 200 as it applies to Fin and Feather.

32. Fin and Feather denies Paragraph 201 as it applies to Fin and Feather.

33. Fin and Feather is without sufficient information of Paragraph 202 and neither admits or denies the Paragraph.

34. Fin and Feather denies Paragraph 203.

35. Fin and Feather is without sufficient information of Paragraph 204 and neither admits or denies the Paragraph.

36. Fin and Feather denies Paragraph 205.

37. Fin and Feather denies Paragraph 206.

38. Fin and Feather denies Paragraph 207 as it applies to of Fin and Feather as a Third Party Defendant.

39. Fin and Feather denies Paragraph 208 as it applies to Fin and Feather as a Third Party Defendant.

40. Fin and Feather denies Paragraph 209 and further alleges that it has not released any hazardous substances.

41. Fin and Feather denies Paragraph 210, denies any releases, any tests or other activities it would be responsible for and denies any responsibility for any damages to the Defendant.

42. Fin and Feather denies Paragraph 211, denies any responsibility for paying for future response costs of Third Party Plaintiffs.

43. Fin and Feather is without sufficient information of Paragraph 212 and neither admits or denies the Paragraph.

44. Fin and Feather is without sufficient information of Paragraph 213 and neither admits or denies the Paragraph.

45. Fin and Feather is without sufficient information of Paragraph 214 and neither admits or denies the Paragraph.

46. Fin and Feather denies Paragraph 215.

47. Fin and Feather denies Paragraph 216 and any liability for respective share of damages.

48. Fin and Feather is without sufficient information of Paragraph 217 and neither admits or denies the Paragraph.

49. Fin and Feather is without sufficient information of Paragraph 218 and neither admits or denies the Paragraph.

50. Fin and Feather denies Paragraph 219 and any responsibility for release of some of the same constituents of poultry liter.

51. Fin and Feather denies Paragraph 220.

52. Fin and Feather denies Paragraph 221 as it applies to Fin and Feather. They deny that that Fin and Feather should be responsible for any injunctive relief, clean-up, assessment or remediation efforts.

53. Fin and Feather denies the Prayer for Relief and asks that the Court award attorney fees and costs for having to defend this lawsuit.

AFFIRMATIVE DEFENSES

54. Fin and Feather, Third Party Defendant further asserts that Fin and Feather is entitled to the defenses of estoppel, including estoppel as no private land owners in Arkansas who own land in the Illinois River Watershed are a party to this lawsuit, nor are all the private land owners in Oklahoma who own land in the Illinois River Watershed a party to this lawsuit, laches, failure to timely file, contributory negligence, assumption of risk by Third Party Plaintiffs and that Third Party Plaintiff has failed to state a claim upon which relief can be granted and further asserts any other affirmative defenses available from facts developed during discovery.

55. Wherefore, Third Party Defendant, Fin and Feather, prays that Third Party Plaintiffs take nothing on their Petition and that the Third Party Defendant, the Fin and Feather Resort, Inc. be awarded reasonable attorney fees and costs.

Therefore the Fin and Feather Resort, Inc. requests damages for nuisance and filing a frivolous lawsuit and all attorney fees and costs of defending this lawsuit and all other and further relief as it is just and appropriate.

Fin and Feather, Third Party Defendant

/s/ Jo Nan Allen
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Dated: April 13, 2006

CERTIFICATE OF SERVICE

I certify that on the 13th day of April, 2006, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants.

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I hereby further certify that on this 13th day of April, 2006, I mailed a true and correct copy of the above document to the following who are not registered with the ECF System by depositing the same into the United States Mail with proper Postage prepared thereon:

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